

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-183

**XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX**

FINAL DECISION

AUTHOR: Ulmer, D.

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on September 29, 2006, upon receipt of the applicant's completed application and military records.

This final decision, dated May 31, 2007, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked the Board to upgrade his RE-4 (not eligible to reenlist) reenlistment code so that he can join the Army and go to Iraq and serve his country. The military record indicates that the applicant enlisted in the active duty Coast Guard on January 12, 1987. He was honorably discharged on November 30, 1987, by reason of unsuitability, with a JMB (personality disorder) separation code and an RE-4 reenlistment code.

APPLICANT'S ALLEGATIONS

The applicant stated that his father forced him to join the Coast Guard at age 17. He further stated as follows:

I was a stupid kid and I just wanted out. Finally my superiors offered me an honorable discharge. I let them know in writing . . . that I planned to serve in the future. They tricked me by giving me a reenlistment code of 4 even though they led me to believe I could join another branch at a later date because I received an honorable discharge. I need this injustice corrected so I can join the Army and go to Iraq and serve my country.

The applicant stated that he did not discover the alleged error until September 11, 2001. He stated that after September 11, 2001, he attempted to join the Army but was told that it was impossible for him to join with the RE-4 reenlistment code. He stated that he just recently discovered the BCMR on line.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on January 12, 1987. On March 13, 1987, the applicant completed recruit training and reported to his first duty station.

On May 21, 1987, the applicant received an administrative remarks (page 7) entry counseling him about under age drinking and being intoxicated aboard the cutter. The page 7 documented the event as the applicant's first alcohol incident.

On July 7, 1987, the applicant was awarded non-judicial punishment for being absent without leave from June 25, 1987 through June 30, 1987. He was punished with fourteen days extra duty.

In July 1987, the applicant was referred for a medical evaluation by his command because of his apparent difficulty in adjusting to his job-related responsibilities and to following orders. On August 10, 1987, he was diagnosed with alcohol abuse and with having an atypical personality disorder.

On August 24, 1987, the applicant was referred to the medical department after reporting to the ship the previous evening, August 23, 1987, intoxicated and complaining that he had been hit on the back of the head with a pool cue in a bar. The medical note also stated that the applicant had been sniffing isobutyl nitrate (Rush). The applicant was diagnosed with a mixed personality disorder and alcoholism. The note further indicated a referral to a Naval Alcohol program.

On September 1, 1987, the commanding officer (CO) informed the applicant that the CO was recommending that the applicant be discharged from the Coast Guard for the convenience of the government with an honorable discharge. The CO informed the applicant that his mixed personality disorder was the basis for his recommendation for discharge. The applicant was advised of his opportunity to make a statement.

On September 17, 1987, the applicant received a page 7 documenting the incident that occurred on August 23, 1987 as his second alcohol incident. The page 7 also noted that he possessed isobutyl nitrate (rush).

On September 11, 1987, the applicant submitted a statement in response to the proposed discharge. He stated the following:

I hold no animosity or dislike towards the Coast Guard. The problems I have had adjusting were caused by problems in my personal life. I've learned a great deal

in the short time that I've been in [the Coast Guard] and would like to express my appreciation.

One of the biggest problems I've had is my inability to cope with the stress placed upon me by the Coast Guard. I feel my age and my personal problems contributed to this factor. I know it is in my, as well as the Coast Guard's best interest to discharge me. At this time I am unable to serve. However, after I am discharged, I plan to work out my personal problems, and in the future, possibly serve again after the problems are worked out.

On September 22, 1987, the CO recommended that the Commandant honorably discharge the applicant by reason of unsuitability due to an atypical personality disorder. The CO also noted the applicant's non-judicial punishment and two alcohol incidents.

On October 14, 1987, the CO notified the applicant that the September 1, 1987, notification of proposed discharge was in error. He further informed the applicant that he had amended his recommendation to request the applicant's discharge by reason of unsuitability related to a mixed personality disorder rather than a discharge by reason of convenience of the government.

On October 19, 1987, the applicant wrote that he did not object to the discharge from the Coast Guard. He further stated that he understood that the discharge had been initiated by reason of unsuitability related to his personality disorder. He stated that his letter of September 11, 1987 remained in effect.

The applicant was discharged on November 30, 1987.

VIEWS OF THE COAST GUARD

On January 12, 2007, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief to the applicant. The JAG asked that the Board accept the comments from Commander, Coast Guard Personnel Command (CGPC) as the advisory opinion.

CGPC noted that the application was not timely and that the applicant had not provided any justification for not filing his application sooner. With respect to the merits, the applicant stated the following:

A review of the applicant's record does not reveal any error or injustices with regards to processing of his discharge and assignment of the RE-4 reenlistment code. The applicant was discharged for unsuitability due to personality disorder. The applicant does not object to the nature or character of his discharge. The applicant was afforded due process and made a statement in his behalf.

The assignment of Reenlistment Code of RE-4 is consistent with Coast Guard policy . . . for unsuitability discharges. The applicant was not suitable for military

service based upon his personality disorder. Additionally, a complete review of the Applicant's record indicates in the 10 months of service, the applicant was involved in two separate alcohol incidents and abused drugs. The Coast Guard's processing of the applicant for an unsuitability discharge for personality disorder was far more favorable than processing the applicant for drug or alcohol administrative or disciplinary processing. Had the applicant been processed for either of these other conditions, the most favorable reenlistment code he would have received would have been RE-4.

The applicant asked for relief based upon a presumption that he was led to believe that with an honorable discharge he would be allowed to serve again. The applicant contends that he was tricked with the assignment of the RE-4 code and that he was led to believe he could join another branch of the service at a later date. Regardless of the applicant's understanding of the administrative assignment of the Re-code, the administrative discharge for unsuitability was properly processed and the only suitable reenlistment code was assigned.

There is no error or injustice in the assignment of the applicant's reenlistment code of RE-4 or the processing of his administrative discharge.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 17, 2007, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond. The Board did not receive a reply.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6)

Article 12-B-16 provides for discharge by reason of unsuitability due to personality disorders as listed in the Medical Manual.

Medical Manual (COMDTINST M6000.1B)

Chapter 5.B.2. lists the following as personality disorders: Paranoid, Schizoid, Schizotypal, Obsessive Compulsive, Histrionic, Dependent, Antisocial, Narcissistic, Avoidant, Borderline, Passive-aggressive, and Personality disorder NOS.

Commandant Instruction (COMDTINST) M1900.4B (Instruction for the Preparation and Distribution of the Certificate of Release or Discharge from Active Duty, DD Form 214)

Chapter 2 (Separation Program Designators) of COMDTINST M1900.4B authorized and RE-4 reenlistment code with the JMB separation code. This provision states that a RE-3G may be assigned only when authorized by the Commandant.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code.

2. The application was not timely. To be timely, an application for correction of a military record must be submitted within three years after the applicant discovered or should have discovered the alleged error or injustice. See 33 CFR 52.22. This application was submitted approximately nineteen years beyond the statute of limitations. The applicant claimed that he did not discover the alleged error until September 11, 2001, when he tried to join the Army. He stated that until then he thought because he had an honorable discharge he could still join a branch of the armed forces. However, the applicant knew in 1987 that he was being discharged by reason of unsuitability due to a personality disorder. In addition, his DD form 214, which he signed, contains the RE-4 reenlistment code. Therefore, the applicant knew or should have known of the alleged error at the time of his discharge from the Coast Guard.

3. Although the applicant's explanation for not filing his application sooner is not persuasive, the Board may still consider the application on the merits, if it finds it is in the interest of justice to do so. In Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that in assessing whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further stated that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review." Id. at 164, 165.

4. Based on a cursory review of the merits, the Board finds that the applicant is not likely to prevail on his claim. In this regard, the Board notes that the applicant was advised of the reason for his discharge and provided the opportunity to make a statement as required by the personnel Manual. In his statement, the applicant wrote that his discharge was in the best interest of the Coast Guard and himself. He acknowledged that he was being discharged by reason of a personality disorder. The applicant also indicated that after resolving his personal problems, he may possibly want to serve in the future. However, the applicant's statement in this regard was not binding on the Commandant, and there is nothing in the record to suggest that the Coast Guard led the applicant to believe that he could reenlist at a future time.

5. In addition, the assignment of the RE-4 reenlistment code for the applicant's unsuitability personality disorder discharge was appropriate and in accordance with COMDTINST M1900.4B.¹ Further, the RE-4 reenlistment code is supported by the applicant's two alcohol incidents and NJP.

¹ It appears from the record that that the applicant's personality disorder was diagnosed by a physician's assistant, rather than a psychiatrist. Article 12-B-16 of the Personnel Manual (1982) states: "When psychiatric considerations are involved, the medical officer should be a psychiatrist, when available." Neither the applicant nor the Coast

6. Therefore the Board finds that due to the length of the delay, the lack of a persuasive for not filing his application sooner, and the lack of probable success on the merits of his claim, it is not in the interest of justice to waive the statute of limitations in this case. The application should be denied because it is untimely and because it lacks merit.

7. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

Guard raised and/or addressed this issue. Although the Board renders no decision with regard to this issue, it notes, however, that nineteen years have elapsed since the applicant's personality disorder diagnosis and proof of whether a psychiatrist was available at the time is probably non-existent.

ORDER

The application of XXXXXXXXXXXXXXXX, USCG, for correction of his military record is denied.

Patrick B. Kernan

Donald A. Pedersen

Kenneth Walton